

Minutes of the Board of Adjustment meeting held on Monday, October 18, 2010, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Joyce McStotts, Chair
Rosi Haidenthaller
Roger Ishino
Preston Olsen
Ray Christensen, Senior Planner
Tim Tingey, Community & Economic Development Director
G.L. Critchfield
Citizens

Excused: Jonathan Russell, Vice-Chair

The Staff Review meeting was held from 5:15 to 5:30 p.m. The Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Ms. McStotts explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

APPROVAL OF MINUTES

Roger Ishino made a motion to approve the minutes from September 13, 2010 as written. Rosi Haidenthaller seconded the motion.

A voice vote was made. The motion passed 4-0.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

CASE #1422 – CURTIS SCHMIDT – 600 West Capri Drive – Project #10-213

Curtis Schmidt was the applicant present to represent this request. Ray Christensen reviewed the location and request for a variance to allow for a fence in the corner lot side yard area of the property located within the R-1-8 zone. The proposed six-foot fence would be set back 15 feet from the adjacent property boundary line to the north. The ordinance refers to the exterior side yard on corner lots as the corner lot side yard and allows for fences up to six feet in height in this area unless there is a driveway on an adjacent property within 12 feet of the property line. In this case there is a driveway approximately six feet from the property line on the adjacent property to the north. Because of the driveway, the maximum fence height allowed in the corner lot side yard is 3 feet for a solid fence or 4 feet for an open view fence such as chain link. Murray City Code Section 17.64.020.B: addresses fence height on a corner lot and states: Fence Height: Corner Lot: Fences, walls, hedges, or other screening material greater than three feet in height are permitted within the street side yard setback area, provided, that such fence, wall, hedge, or other screening material does not exceed six feet in height, is not adjacent to a driveway on an adjoining lot, and is not located within a triangular area formed by the property lines and a line connecting them at points twenty five feet from the intersection of the property lines. If adjacent to a driveway on an adjoining lot,

the maximum fence height shall be three feet if solid, or four feet if an open type fence within the minimum side yard setback area of the zone. "Adjacent", as used in this chapter, means any distance from the corner lot property line to the driveway of the adjoining lot which does not exceed 12 feet. The purpose of the ordinance is to provide for adequate vision clearance for properties adjacent to corner lot fences. The applicant has proposed to locate the fence fifteen feet from the adjacent property line to the north. The ordinance only limits fence height in corner lot side yards when driveways are located within 12 feet of the property line. The driveway is already 6 feet from the property line and with the 15 foot setback proposed by the applicant, the total distance from the fence to the driveway is 21 feet. Even if the neighboring property owner were to expand their driveway to the property line, there would still be 15 feet of vision clearance area which exceeds the minimum 12 foot distance from driveway to property line by three feet. Literal enforcement of the ordinance would not allow for a 6 foot high fence on this corner lot side yard that, as proposed, would provide the setback envisioned by the ordinance standard. In addition, the applicant proposes to set the fence back four feet from the sidewalk on Allendale Drive which will provide additional vision clearance. The property is a corner lot and the required setbacks limit the rear and side yard areas available for use. In addition, the house was placed on the lot at the minimum rear yard setback of 15 feet at the time the home was constructed in 1957. The internal side yard is slightly larger than the minimum 8 feet required at the time the home was constructed. However, this is still a very minimal useable interior yard. Based on review and analysis of the application materials, subject site and the surrounding area, and applicable Murray Municipal Code sections, staff finds that the proposal meets the standards for a variance and recommends approval subject to conditions.

Rosi Haidenthaller asked the exact measurement of the variance. Ray Christensen responded the height variance would be 3 feet and the proposed 6 foot high fence location would be setback 4 feet as opposed to the required 20 foot setback. He explained that the fence could be 3 feet high within the side yard corner setback, but does not provide a privacy fence which the applicant is desiring to have.

Tim Tingey explained the ordinance requires a driveway to be setback 12 feet which it is not and is setback only 6 feet. The variance includes the distance requirement. He started the applicant is proposing to bring the fence back an additional 15 feet from the rear property line which helps with sight visibility.

Roger Ishino clarified that the issue of sight visibility is from the Allendale Drive side. Ray Christensen responded the fence would be 4 feet perpendicular to sidewalk along Allendale Drive and from the driveway to the proposed fence would be approximately 21 feet. He explained that if the driveway were widened in the future and was located on the boundary line, there would be a 15 foot fence setback.

Curtis Schmidt, 600 West Capri Drive, stated he does not reside in this home, but is a rental home and the main reason for having the fence is because the family that resides in the home have children, and the fence would be for privacy and safety reasons and the children have a very limited yard to play in.

Richard Moffat, 5626 South Allendale Drive, stated that he has spoken with Mr. Schmidt in regards to this fence request. He stated he has lived in his home since 1972. Mr. Moffat stated the neighbor across the street also has four young children. Mr. Moffatt

stated that Capri and Allendale streets do not intersect at a true "t" and slants which makes the intersection somewhat of a blind spot and the proposed fence would only impact this already existing situation. He stated the requested 4 foot setback does not allow for adequate visibility. He stated that vehicles traveling in a southern direction along Allendale Drive have missed the intersection and as a result have driven onto his lawn.

Curtis Schmidt responded this fence proposal will not be a visibility problem for vehicular traffic.

Preston Olsen asked if there are stop signs at this intersection. Ray Christensen responded there are no stop signs at this intersection.

Rosi Haidenthaller commented that the property owner has attempted to maximize the privacy in the side yard space, and also attempted to meet the fencing standards with a 25 foot front yard setback and sufficient clearance from the rear yard property line. She stated there are numerous illegal fences throughout the city and the fences of concern are those that are adjacent to the curb.

Preston Olsen asked for clarification from the sidewalk and the 4 foot setback as proposed. Tim Tingey responded that the ordinance allows a fence in a side yard up to 6 feet in height provided it is not within 12 feet from the property line to an adjacent driveway. He stated there is six feet from the property line to the driveway plus an additional 15 foot setback to the proposed fence and that the 20 foot fence setback is required on corner lot side yard.

Rosi Haidenthaller stated a hardship associated with this property is the fact that there is no rear yard and 15 feet is minimal.

Roger Ishino made a motion to grant the variance as requested based on the Findings of Fact and with the following condition:

1. Meet all other fence code standards related to minimum vision clearance at intersections and front yard setbacks and any other applicable standards

Preston Olsen seconded the motion based on this request being in substantial compliance with the 12 foot setback from a driveway and the applicants are proposing to have a 15 foot setback from the rear yard property line.

Call vote recorded by Ray Christensen.

A Ms. McStotts

A Mr. Olsen

A Mr. Ishino

A Ms. Haidenthaller

Motion passed 4-0.

Preston Olsen made a motion to approve the Findings of Fact as outlined by staff. Seconded by Rosi Haidenthaller.

A voice vote was made. The motion passed 4-0.

APPEAL CASE #1421 – FLOWER PATCH – 4370 South Commerce Drive – Project #10-212

Tom Gordon, Parrish Gordon and Corbin Gordon were the applicants present to represent this request. Tim Tingey reviewed the location and request for an appeal to a Conditional Use Permit approved by the Planning Commission subject to conditions. The Conditional Use Permit requires upgrade of the site with landscaping to meet the required improvements as written in Municipal Code 17.68. Municipal Code Ordinance 17.48.200 allows an electronic message sign within the M-G-C zoning district subject to compliance to the sign code regulations and Conditional Use Permit approval. Municipal Code Ordinance 17.56.020 states that a Conditional Use Permit is required for all uses listed as conditional uses in the district regulations. Municipal Code Ordinance 17.68.030 A.2. requires landscape and related improvements required by this chapter to be installed if a Conditional Use Permit is required. The landscaping requirement is listed in Condition #3 which reads: "A formal landscaping plan shall be submitted with the building permit. The plan shall comply with the requirements of Chapter 17.68 of the Murray Municipal Code shall be submitted and be approved by the Murray City Forester and be installed as approved before final inspection of the sign. The plan shall include 10 foot depth of landscaping at the street frontage and 5 foot depth of landscaping adjoining parking stalls at the perimeter of the property meeting the landscaping regulation. The area behind the building may need to be upgraded with landscaping or be paved to meet code". The applicants are appealing the landscaping condition due to concerns with the requirement to bring the whole site into compliance with minimal changes to the property by relocating the sign to the site. They also argue that the imposed conditions are not necessary to protect the public interest.

The history of the business on this property was previously Zim's, which operated a business on this site for many years and sold the property to 4370 South Holdings, LLC. The properties are currently nonconforming regarding the landscaping on the site. The applicants, 4370 South Holdings, LLC (doing business as Flower Patch) and YESCO applied to the Murray Planning Commission for a Conditional Use Permit for an electronic message sign at the meeting dated September 16, 2010. The applicants plan to relocate the existing electronic message sign which is currently located at the property addressed 4284 South Commerce Drive and attach it to the existing Flower Patch pole located at the north west side of the property on the east side of I-15. The plan shows the electronic message sign will be set back 17 feet from the property line boundary and the dimensions of the sign are 9 feet 7 inches by 19 feet 11 inches with an overall sign height of 34 feet. The sign meets the sign regulations for height and size of sign. The Planning Commission based their decision on zoning code which requires compliance with landscaping and other standards if a conditional use permit is required.

The Board of Adjustment has authority to review the Planning Commission's decision to determine if it is unreasonable. In this case the decision was based on the requirement of code and the Planning Commission performed their function to ensure that a decision and conditions were based on the requirements outlined in code. However, in this circumstance the relocation of the sign, which is a relatively minor change to the property, is not proportional with what is being conditioned with the site improvements.

The purpose of the zoning ordinance is to facilitate the orderly growth of the city and to preserve and create a favorable environment for citizens and visitors of the city. Additionally, the purpose of the ordinance is to foster business development in the city as well. Requiring extensive site improvements for a minimal change to the site which in this case is simply relocation of a sign, may not be practical in this situation and may detract from the purpose of the code to foster business development. Staff feels that if there are any other more significant changes to the site that all standards will apply at such time. Staff feels that in this case the improvements need to be proportional with the changes to the site and that it is in the interest of the city to reduce requirements until a time when there is more substantial development of the site. Therefore, staff concludes that removal of the requirement for upgrades to landscaping is appropriate in this case but the other standards approved by the Planning Commission will apply including meeting all sign code requirements, building code requirements, parking lot striping to meet code, including 3 disabled stalls to meet ADA regulations with signs installed, screening of trash containers and Murray Power Department clearance standards. Staff also feels it is important to ensure that the area on the west side of the building be maintained appropriately as well.

Tom Gordon, 3259 South Mill Road, Heber, Utah, stated he is one of the owners of the Flower Patch business.

Corbin Gordon, attorney representing Flower Patch, stated that he agrees with the staff recommendation for this appeal to not install the landscaping as required by the Planning Commission. Corbin Gordon stated there is an existing pole that has an existing sign and the request of the Flower Patch business is to take the sign off the existing pole and install a new sign on the same pole. He stated there will be no changes to the sign height and the proposed sign does meet the Murray City sign code.

Roger Ishino asked if the landscaping improvement estimate of \$50,000 is valid. Corbin Gordon responded that amount is valid. He stated that the landscaping requirement would make the sign installation virtually too expensive.

Rosi Haidenthaller asked if the Flower Patch business has any future plans to renovate or upgrade the building. Corbin Gordon responded that the applicants are not attempting to get out of bringing the property up to code, and if in the future the building is altered the property will be brought up to code. He stated the issue at hand is that with the current economic environment, the sign will help generate more business, and the increased cost for the landscaping would make it economically impossible for them to do.

Roger Ishino clarified that this appeal is for all the landscaping improvements as previously required with the recent conditional use permit application reviewed by the Planning Commission on September 16, 2010. Tim Tingey responded in the affirmative, but stated that the issues with the weeds on the property will need to be maintained.

Joyce McStotts asked what the property owners intend to do about the weed issue on the property. Corbin Gordon responded that the property owners have recently mowed the weeds on the property and sprayed the property and will continue to do so.

Tom Gordon stated that they removed the weeds adjacent to the building when they first purchased the property prior to moving into the building. He stated that the property adjacent to the freeway ramp is owned by UDOT and the federal government and they are not willing to do anything with it.

Tim Tingey stated if the Board overturns the decision of the Planning Commission's Conditional Use Permit approval with regard to the landscaping requirement, that they impose the conditions as suggested by staff.

Rosi Haidenthaller made a motion to overturn the decision of the Planning Commission requiring landscaping for the Conditional Use Permit because the application was just for a sign and not a change of use. This approval of the appeal will include a modification to condition 3 to exclude the requirement for upgrades to landscaping on the site and include the following conditions:

1. All code standards and site upgrades will apply and must be completed if there are any future improvements to the site including building expansions, or remodeling as required by Municipal Code 17.68.030, requiring site plan or conditional use permit approval;
2. The area on the west side of the building will need to be enhanced with weed control maintenance. The owner shall work with Community and Economic Development staff on these improvements to the site;
3. All other conditions approved by the Planning Commission will apply.

Seconded by Roger Ishino.

Call vote recorded by Ray Christensen.

A Ms. McStotts
A Mr. Olsen
A Mr. Ishino
A Ms. Haidenthaller

Motion passed 4-0.

Roger Ishino made a motion to approve the Findings of Fact as outlined by staff.
Seconded by Preston Olsen.

A voice vote was made. The motion passed 4-0.

Meeting adjourned.

Tim Tingey
Director of Community & Economic Development